

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

IN RE: BOSTON SCIENTIFIC CORP.,
PELVIC REPAIR SYSTEM
PRODUCTS LIABILITY LITIGATION

MDL No. 2326

THIS DOCUMENT RELATES TO THE FOLLOWING CASES:

Tyree, et al. v. Boston Scientific Corp. Civil Action No. 2:12-cv-08633 (Lead Case)

**PRETRIAL ORDER # 115
(Defendant Boston Scientific Corporation's
Motion to Sever and Conduct Individual Trials)**

Pending before the court is Defendant Boston Scientific Corporation's Motion to Sever and Conduct Individual Trials, filed October 6, 2014. [Docket 417]. On October 13, 2014, plaintiffs responded. [Docket 437].

Boston Scientific Corporation ("BSC") continues to take issue with my decision to consolidate eleven cases by PTO # 78. [Docket 701]. The number of cases in this consolidated action has since been reduced to four following voluntary dismissals with prejudice. All plaintiffs, including the remaining four, were implanted with the Obtryx Transobturator Mid-Urethral Sling System ("Obtryx") to treat stress urinary incontinence.

BSC's Motion essentially seeks reconsideration of PTO # 78.¹ Rule 54(b) of the Federal Rules of Civil Procedure governs reconsideration here. *See Fayetteville Investors v. Commercial Builders, Inc.*, 936 F.2d 1462, 1469-70 (4th Cir. 1991) (finding district court properly reconsidered an interlocutory order under Rule 54(b)); *In re Digitek Prods. Liab. Litig.*, MDL

¹ BSC has also challenged my consolidation of cases to be tried in Florida by intercircuit assignment. By PTO # 111, I denied BSC's motion to sever and conduct individual trials in the Florida consolidation. [Docket 856].

No. 1968, 2010 WL 5396377, at *1 n.2 (S.D. W. Va. Oct. 20, 2010); *Bragg v. Robertson*, 183 F.R.D. 494, 495-96 (S.D. W. Va. 1998) (stating that “the Court retains power to amend interlocutory orders to achieve complete justice”). Rule 54(b) states:

[A]ny order or other decision, however designated, that adjudicates fewer than all of the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.

Fed. R. Civ. P. 54(b). “Notwithstanding that precept, it is improper to file a motion for reconsideration simply to ask the Court to rethink what the Court had already thought through—rightly or wrongly.” *Mt. Hawley Ins. Co. v. Felman Prod., Inc.*, No. 3:09-cv-00481, 2010 WL 1404107, at *2 (S.D. W. Va. Mar. 30, 2010).

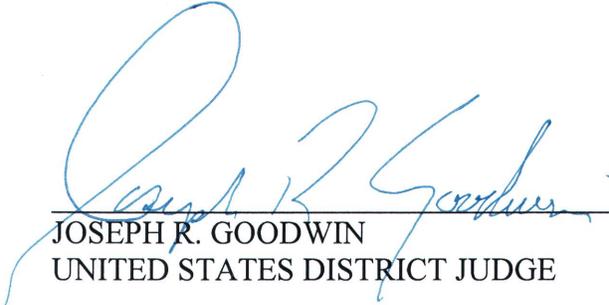
BSC does not provide convincing reasons for any change to PTO # 78. I will not restate my decision in PTO # 78, except to point out that the Judicial Panel on Multidistrict Litigation acknowledged in its Transfer Order transferring this MDL (and MDLs 2325 and 2327) that these cases involve common questions of fact: “[t]he actions in each MDL share factual issues arising from allegations of defects in pelvic surgical mesh products manufactured by . . . Boston Scientific . . .” (Transfer Order [Docket 1], at 2).

Furthermore, in their response, plaintiffs confirm that following several months of fact and expert discovery, common facts and theories of liability in the four cases remain. (Pls.’ Opp. to Def. BSC’s Motion to Sever and Conduct Individual Trials [Docket 437], at 9-12). BSC’s reference to the timing of a FDA-related notice vis-à-vis the implantation of certain plaintiffs (some of whom have since been dismissed) is irrelevant in light of my rulings on 510(k) clearance and other related FDA issues. As I ruled in PTO # 111, “I am unpersuaded that the barriers suggested by [BSC] in a consolidated trial are insurmountable or will result in the prejudice suggested by [BSC].” (Pretrial Order # 111 [Docket 856], at 1).

For the reasons explained above, Defendant Boston Scientific Corporation's Motion to Sever and Conduct Individual Trials is **DENIED**.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2326 and in **2:12-cv-08633** and it shall apply to each member related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2:14-cv-26800. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at www.wvsd.uscourts.gov.

ENTER: October 14, 2014



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE